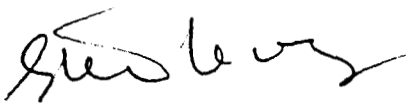


**Memorandum**

J : Mr. D. Scott Abel  
Fuel Taxes Division (MIC:30)

Date: April 20, 1993

From : Stella Levy  
Tax Counsel



Subject: Application of Underground Storage Fee to School Districts

Janet Vining has asked me to respond to your March 31, 1993 memorandum requesting an opinion as to whether the Underground Storage Tank Maintenance Fee (UST Fee) is applicable to school districts. You attached a letter from the Unified School District contending that school districts are state agencies, and therefore, not liable as "owners" and citing Butt v. State of California (1992), 4 Cal. 4th 668.

Revenue and Taxation Code Section 50107 of the UST Law defines a "fee payer" as "any person liable for the payment of a fee imposed by § 25299.41 of the Health and Safety Code." The latter section provides that:

"Every owner of an underground storage tank who is required to obtain a permit to own or operate a tank pursuant to Section 25284 shall pay a storage fee of six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank which he or she owns."

While an "owner" for Section 25284 for permit purposes is defined as "the owner of an underground storage tank" (Health & Safety Code § 25281(i)), the definition of "owner" for purposes of Section 25299.41 is "the owner of an underground storage tank containing petroleum" and "includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government." (Health & Safety Code § 25299.21).

It is our opinion that a school district is a "district" and is therefore an "owner" and liable for the fee. The exemption for the state and its agencies should not be construed so broadly as to include school districts. Such a construction would fly in the face of the express language of

the statute, as well as contradict the general rule that exemptions to tax or fee statutes should be narrowly construed.

The case of Butt v. California (Ibid.) is not relevant to this discussion. This case was brought as a challenge to the announcement of the Richmond Unified School District in 1991 that it intended to close its schools 6 weeks prior to the end of the term because of budget shortfalls. The question before the court was "whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of 'basic' educational equality." (Id. at p. 674). Under the unprecedented circumstances of this case, the court held that the State was obligated to bail out the school district because the California Constitution guarantees basic equality in public education regardless of district residence.

To say that the State of California is the primary guarantor of basic equality in public education, is not to say that school districts are entitled to the State's exemption from the UST Fee. In the absence of a specific statutory exemption for school districts, and given the language of the statute, school districts are liable for payment of the UST Fee.

SCL:es

cc: Mr. Larry Augusta  
Ms. Janet Vining  
Mr. Edward King (MIC:30)